COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts	)	
For Arbitration of Interconnection Agreements between Competitive	)	D.T.E. 04-33
Local Exchange Carriers and Commercial Mobile Radio Service	)	
Providers in Massachusetts Pursuant to Section 252 of the	)	
Communications Act of 1934, as amended, and the Triennial	)	
Review Order	)	

MCI's INITIAL BRIEF

MCI, Inc. ("MCI"), on behalf of its operating subsidiaries that have interconnection agreements with Verizon Massachusetts ("Verizon"), submits this initial brief on the non-rate issues that are in dispute between MCI and Verizon in this consolidated arbitration proceeding.

MCI's brief follows the order of issues set forth in the "Joint Matrix of Issues to be Arbitrated in Docket 04-33", dated February 18, 2005 and the "Supplemental List of Issues to be Arbitrated in Docket 04-33," dated March 4, 2005.[1] MCI's response to the Department's two briefing questions follows the presentation of MCI's positions on the disputed issues.

MCI's proposed contract language for the amendment to MCI's interconnection agreements with Verizon is set forth in two documents, which are attached hereto as Exhibits A and B. Exhibit A is MCI's redlined version of Verizon's proposed "Amendment No. 1," which was transmitted to Verizon by MCI on September 29, 2004.

[1] MCI is briefing only issues in dispute between MCI and Verizon. Thus, not all issues listed in the issues matrix are addressed herein.

Exhibit B is MCI's **second** redlined version of Verizon's proposed "Amendment No. 1," transmitted to Verizon on March 17, 2005 and filed with the Department on March 18, 2005, setting forth additional contract language in light of the FCC's *Triennial Review Remand Order*.

ARGUMENT

ISSUE: 1 Should the Amendment include rates, terms, and conditions that do not arise from federal unbundling regulations pursuant to 47 U.S.C. sections 251 and 252, including issues asserted to arise under state law?

Yes. Sections 251 and 252 are not the sole source of Verizon's unbundling obligations. The interconnection agreement between MCI and Verizon should set forth all of Verizon's wholesale obligations to MCI, including those obligations arising from Sections 251, 252 and 271 of the Communications Act, obligations arising under Massachusetts law, as well as obligations arising from voluntary commitments made by Verizon for the benefit of MCI specifically or all CLECs generally. Nothing in federal law precludes MCI from having an interconnection agreement that sets forth in a comprehensive fashion all of Verizon's wholesale obligations.

A. Verizon should be required to unbundle its network under state law.

The Department's authority to mandate unbundling under state law has not been preempted by federal law.[2] Section 252(e)(3) of the Telecommunications Act of 1996 ("the Act") provides that nothing shall prohibit states from establishing or enforcing other

[2] The Department should use this proceeding to reconsider its apparent finding in the D.T.E. 03-60/04-73 Consolidated Order that it is preempted by federal law from ordering unbundling as a matter of state law. D.T.E. 03-60/04-73 Consolidated Order, released December 15, 2004, p. 22.

requirements of state law in interconnection agreements. Specifically, section 252(e)(3) provides that:

> Notwithstanding paragraph (2), but subject to section 253 of this title, nothing in this section shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements.

47 U.S.C. §252(e)(3).

The Department has ample authority under state law to order Verizon to unbundle its network, including its plenary jurisdiction over utilities under section 12 of chapter 159 of the Massachusetts General Laws. This section confers upon the Department

> general supervision and regulation of, and jurisdiction and control over, the following services, when furnished or rendered for public use within the commonwealth…(d) The transmission of intelligence within the commonwealth by electricity, by means of telephone lines or telegraph lines or any other method or system of communication, including the operation of all conveniences, appliances, instrumentalities, or equipment appertaining thereto, or utilized in connection therewith.[3]

The Department may exercise its authority under state law to require Verizon to unbundle its network at just and reasonable rates consistent with federal law. Preemption occurs only when (i) Congress "occupies the field" in the area the state seeks to regulate; (ii) the federal government expressly preempts state regulation; or (iii) there is a conflict between state and federal law. None of these conditions has occurred. In the *Triennial Review Order*, the FCC recognized that provisions in the Act preserving state authority demonstrate that Congress did not intend to occupy the field with respect to unbundling. For example, the FCC ruled: "We do not agree with incumbent LECs that argue that the

[3] 159 MGL §12.

states are preempted from regulating in this area as a matter of law. If Congress intended to preempt the field, Congress would not have included section 251(d)(3) in the 1996 Act."[4]

None of the pronouncements of the FCC in the *TRRO*[5] or the *TRO* demonstrate that agency's intent to preempt this Department's authority to require unbundling under Massachusetts law. Although the *TRO* contained what the D.C. Circuit dubbed the FCC's "general prediction" about when state agency actions regarding unbundling might be preempted, the D.C. Circuit in *USTA II* held that the "general prediction voiced in ¶ 195 does not constitute final agency action, as the [FCC] *has not taken any view on any attempted state unbundling order*."[6] The court therefore found claims of preemption based on the *TRO* "unripe," and upheld the FCC's actions against such claims.[7] In the *TRRO*, the FCC addressed "those issues that were remanded to us" by *USTA II*.[8] Because the D.C. Circuit in *USTA II* found no preemption had been attempted in the *TRO*, preemption was not one of the issues remanded to the FCC for consideration in the *TRRO*.

Unbundling required pursuant to Massachusetts law does not conflict with federal law. Under the Act, Verizon is still required to provide access to unbundled local

---

[4] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-146, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 192 (footnotes omitted) (2003) ("*TRO*"); Errata, 18 FCC Rcd 19020, 19021 (2003), *vacated and remanded in part, affirmed in part, U.S. Telecom Ass'n v. FCC*, 359 F.3d 554 (2004).

[5] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* WC Docket 04-313, CC Docket No. 01-338, Order on Remand, FCC 04-290 (released February 4, 2005) *("TRRO" or "Triennial Review Remand Order").*

[6] *USTA II*, 359 F.3d at 594 (emphasis added).

[7] *Id*.

[8] *TRRO* at ¶ 19.

switching under Section 271, so a state requirement that Verizon unbundle elements on the section 271 checklist plainly is consistent with federal law. The FCC has held, moreover, that Section 271 checklist elements must be provided at "just and reasonable" rates, the same pricing standard that this Department employs in establishing telephone rates in Massachusetts under state law.[9] Thus, the pricing standard under state law does not conflict with federal law.

B. Verizon's obligation to provide unbundled elements endures under Section 271, regardless of the availability of those same unbundled elements under Section 251.

Verizon's duty to unbundle its network resides in Sections 251 and 271 of the Act. Verizon's proposed interconnection agreement amendment is based solely on the provisions of the *TRO* and the *TRRO*. The *TRRO* only addressed Verizon's obligations under Section 251 of the Act, however, and specifically did not address Verizon's obligations under Section 271.

Pursuant to Section 251, incumbent LECs are required to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[10] To clarify the extent of the section's unbundling obligations and the FCC's authority over them, Subsection 251(d)(2) provides that:

> In determining what network elements should be made available for purposes of subsection (c)(3), the [FCC] shall consider, at a minimum, whether … (A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.[11]

[9] 159 MGLA §14.

[10] 47 U.S.C. § 251(c)(3).

[11] 47 U.S.C. § 252(d)(2).

Any UNE unbundled pursuant to Section 251 must be offered at a rate no higher than a TELRIC rate complying with FCC rules.[12]

When UNEs are "declassified" as Section 251 UNEs, there is no further Section 251 requirement that they be offered at TELRIC-compliant rates. To this point, a plain reading of the *TRRO* reveals that the FCC's national finding of "no impairment" for unbundled local switching is solely based on the FCC's analysis of Section 251 unbundling standards.[13] It is Section 251 unbundling alone, therefore, that is limited by the *TRRO*.

Verizon must make available several essential elements to CLECs pursuant to Section 271. As the FCC re-affirmed in the *TRO*, so long as Verizon wishes to continue to provide in-region interLATA services under section 271 of the Act, it "must continue to comply with any conditions required for [§271] approval,"[14] and that is so whether or not a particular network element must be made available under section 251.[15] Section 271 requires that, to provide long distance service, a BOC must have entered into state commission approved Section 252 interconnection agreements that comply with the "competitive checklist" set forth at Section 271(c)(2)(B). The Section 271 competitive checklist includes several items, like local switching, that BOCs must provide on an unbundled basis at just and reasonable rates.[16]

---

[12] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, et al. (rel. August 8, 1996); *Verizon Comm., Inc. v. FCC*, 535 U.S. 467, (2002) (affirming TELRIC).

[13] *See, e.g., TRRO* at ¶¶ 5, 20-23.

[14] *TRO* at ¶ 665.

[15] *See generally id.* at ¶¶ 653-655.

[16] As to the pricing standard that is applicable to checklist network elements, the FCC held:

In Verizon's Massachusetts Section 271 proceeding, this Department and the FCC found that Verizon had met the checklist items related to unbundling primarily because it had made the applicable elements (loops, transport, switching, and call-related databases) available at TELRIC rates pursuant to Sections 251(c)(3) and 252(d)(1).[17] At the time of Verizon's long distance entry, FCC rules made each of those UNEs available under Section 251. Regulators found that Section 251 TELRIC-priced access was sufficient to demonstrate compliance with the other checklist items related to unbundled access to Verizon's network.

It necessarily follows that as a condition of continuing to provide in-region inter-LATA services in Massachusetts, Verizon must continue to offer unbundled local switching and UNE-P consistent with its Agreement. The FCC has affirmed Verizon's obligation to continue to comply with any conditions required for Section 271 approval, regardless of the availability of a particular network element under Section 251.[18] Any other conclusion would make a mockery of the fact that the statutory checklist items are a

---

> [T]he pricing of checklist network elements that do not satisfy the unbundling standards in section 251(d)(2) are reviewed utilizing the basic just, reasonable, and nondiscriminatory rate standard of sections 201 and 202 that is fundamental to common carrier regulation that has historically been applied under most federal and state statutes, including (for interstate services) the Communications Act. Application of the just and reasonable and nondiscriminatory pricing standard of sections 201 and 202 advances Congress's intent that Bell companies provide meaningful access to network elements.

See id. at ¶ 663. In *USTA II*, the D.C. Circuit upheld the FCC's determinations, including its conclusion that "even in the absence of impairment, BOCs must unbundle local loops, local transport, local switching, and call-related databases in order to enter the interLATA market." *USTA II*, 359 F.3d at 588.

[17] *Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), And Verizon Global Networks Inc. Ffor Authorization to Provide In-Region, InterLATA Services In Massachusetts,* CC Docket No. 01-9, Memorandum Opinion and Order (2001).

[18] *TRO* at ¶ 665.

mandatory and continuing prerequisite for section 271 approval and were the basis on which this Department recommended that Verizon's 271 petition be granted.

ISSUE 2: What terms and conditions and/or rates regarding implementing changes in unbundling obligations or changes of law should be included in the Amendment to the parties' interconnection agreements?

The parties should negotiate (and arbitrate as necessary) any proposed changes to Verizon's unbundling obligations before Verizon may cease providing unbundled access to any UNE that was eliminated by the *TRO* or *TRRO* (or that may be eliminated by a future FCC order). Verizon has proposed to limit its unbundling obligations to only those set forth in 47 U.S.C. § 251 and 47 CFR, Part 51, thus allowing Verizon to implement changes in law by issuing notices to affected carriers without the necessity of going through the change of law process included in Verizon's interconnection agreement with MCI. The change of law language in MCI's interconnection agreement with Verizon is set forth in full in the discussion of issue no. 10 *infra*.

Verizon's proposed "end run" around the parties' interconnection agreement is clearly inappropriate. Verizon's proposal goes well beyond implementing the changes in law mandated by the FCC in the *TRO* and the *TRRO*. Verizon's proposed Amendment No. 1 would completely gut the change of law procedures established by the parties in their original agreement.

Nothing in the *TRO*, *USTA II*, or the *TRRO* invalidates change of law provisions in interconnection agreements. Indeed, the FCC has explicitly acknowledged their applicability.[19] Under Verizon's proposed construct, any changes in law that reduce its

[19] *TRO*, ¶¶700-701; *TRRO*, ¶233.

contract obligations can thus be implemented by giving appropriate notices of discontinuance to carriers affected by the changes. This approach flies in the face of the scheme created by the Congress in the 1996 Telecommunications Act. Congress explicitly required that the ILECs' interconnection, unbundling and resale obligations be captured in agreements that are negotiated and/or arbitrated, and ultimately approved by state commissions. Under Verizon's approach, interconnection agreements would have no practical significance, a result clearly at odds with the statutory framework created by Congress and set forth in sections 251 and 252 of the Act.

ISSUE 3: What obligations, if any, with respect to unbundled access to local circuit switching, including mass market and enterprise switching (including Four-Line Carve-Out switching), and tandem switching, should be included in the Amendment to the parties' interconnection agreements?

ISSUE 4: What obligations, if any, with respect to unbundled access to DS1 loops, DS3 loops, and dark fiber loops should be included in the Amendment to the parties' interconnection agreements?

ISSUE 5: What obligations, if any, with respect to unbundled access to dedicated transport, including dark fiber transport, should be included in the Amendment to the parties' interconnection agreements?

For the reasons set forth under Issue 1, Verizon's obligations under section 271 of the Act to provide unbundled local circuit switching (issue 3), unbundled loops (issue 4) and unbundled dedicated transport (issue 5) should be included in the Amendment, including Verizon's obligation under section 271, and section 202 of the Communications Act, to provide UNE combinations, including UNE-P.

Verizon is required to provide Section 271 local switching as part of the UNE-P combination. Although the FCC in the *TRO* declined to require Verizon to combine

Section 271 local switching with other UNEs pursuant to Section 251(c)(3),[20] and that decision was upheld in *USTA II*, the D.C. Circuit noted that the general nondiscrimination requirement of Section 202 might provide an independent basis for requiring the combination of Section 271 switching with other UNEs.[21]

Providing unbundled mass market switching in isolation provides nothing of value to CLECs because Verizon owns the loop plant that serves consumers in its service territory. If Verizon were to provide unbundled switching to CLECs in isolation, while providing switching to its retail business combined with all the other elements needed to provide service, Verizon would discriminate against CLECs in violation of Section 202 of the Communications Act. Verizon therefore must provide Section 271 switching in combination with the other elements that make up UNE-P. In addition, the unbundled switching rates in the Agreement that were approved by the Department should be considered to be "just and reasonable" under section 271 unless and until it is determined that another section 271 rate should apply and that rate is incorporated into the Agreement.

In its D.T.E. 03-60/04-73 Consolidated Order, the Department relied upon language from the *TRO* to support its holding that Verizon does not have an obligation to combine unbundled network elements under section 271.[22] The Department did not, however, address the discrimination issue raised by the D.C. Circuit in the *USTA II* decision. In ruling upon the legal obligations of Verizon that must be included in the

[20] *See TRO* at ¶ 655 & n.l989.

[21] *USTA II*, 359 F.3d at 590; *see also AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 395 (1999) (discussing disconnection of previously combined elements as potentially discriminatory and "not for any productive reason, but just to impose wasteful reconnection costs on new entrants").

[22] D.T.E. 03-60/04-73 Consolidated Order, released December 15, 2004, p. 55.

Amendment, the Department must address the application of section 202 of the Communications Act to Verizon's provisioning of unbundled elements under section 271.

If the Department decides in this arbitration to limit the scope of the Amendment to include only Verizon's obligations under section 251 of the Act, then MCI submits that language should be included in the Amendment listing unbundled local switching, unbundled high cap loops, and unbundled dedicated transport as "de-listed" UNEs as of the effective date of the Amendment, subject to the terms and conditions that are identical to those set forth in the *TRRO*.

ISSUE 6: Under what conditions, if any, is Verizon permitted to re-price existing arrangements which are no longer subject to unbundling under federal law?

If Verizon is no longer required to offer an element under either section 251 or section 271 of the Act, the element remains an intrastate telecommunications service subject to the jurisdiction and regulation of the Department. New wholesale arrangements must be tariffed at the state level and the rates, terms and conditions must comply with state law, including the statutory requirement that rates be just and reasonable.[23]

ISSUE 7: Should Verizon be permitted to provide notice of discontinuance in advance of the effective date of removal of unbundling requirements? Should the Amendment state that Verizon's obligations to provide notification of discontinuance have been satisfied?

As stated in response to Issue 2, the effective date of removal of unbundling requirements should be the effective date of the amendment to the parties'

[23] 159 MGLA §14.

interconnection agreement that is produced at the conclusion of the change of law process mandated by the interconnection agreements.

ISSUE 8: Should Verizon be permitted to assess non-recurring charges when it changes a UNE arrangement to an alternative service? If so, what charges apply?

Verizon should be permitted to assess non-recurring charges <u>only</u> if there are, in fact, any non-recurring costs associated with the conversion of a UNE arrangement to an alternative wholesale arrangement. If there are no changes to the physical infrastructure being supplied – i.e. loops, switching and/or transport – and only a billing change to switch from a TELRIC rate to a higher rate, then there is no cost basis upon which Verizon can defend the imposition of a non-recurring cost. As the FCC found with respect to EELs conversions, "[c]onverting between wholesale services and UNEs (or UNE combinations) is largely a billing function." *TRO*, ¶588. The same is true when a UNE is converted to a wholesale arrangement.

ISSUE 9: What terms should be included in the Amendment's Definitions Section and how should those terms be defined?

MCI has proposed that the Amendment to the parties' interconnection agreement include definitions for a number of terms. Those proposed definitions are set forth in Section 9.7 of MCI's redlined version of Verizon's proposed contract amendment contained in Exhibit A. The purposes of MCI's proposed revisions are 1) to ensure that the definitions track federal law in all respects and 2) to supply definitions of other terms where Verizon's original draft omits a definition for the term.

ISSUE 10: Should Verizon be required to follow the change of law and/or dispute resolution provisions in existing interconnection agreements if it seeks to discontinue the provisioning of UNEs under federal law? Should the establishment of UNE rates, terms and conditions for new UNEs, UNE combinations or commingling be subject to the change of law provisions of the parties' interconnection agreements?

Yes, Verizon must be required to comply with the change of law provisions in its interconnection agreements. The MCI/Verizon Interconnection Agreement provides as follows:

> 8.2 In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section 16 (Dispute Resolution Procedures) hereof.
>
> 8.3 In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of MCIm or BA to perform any material terms of this Agreement, MCIm or BA may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or has otherwise become legally effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.[24]

Nothing in the *TRO*, *USTA II*, or the *TRRO* invalidates change of law provisions in interconnection agreements. Indeed, the FCC, in both the *TRO* and the *TRRO* has acknowledged the continued applicability of change of law provisions.[25] It must be observed that on October 2, 2003, the effective date of the *TRO*, Verizon distributed to all CLECs and posted on its website a proposed amendment to its existing interconnection

---

[24] MCI/Verizon Agreement, Part A.

[25] *TRO*, ¶¶700-701; *TRRO*, ¶233.

agreements to incorporate the provisions of the *TRO*. The industry notice clearly stated that "[c]arriers seeking to amend their interconnection agreements should review the draft amendment and contact Verizon to proceed with completion of the contracting process." A copy of Verizon's notice is attached as Exhibit C. Further, Verizon's petition for arbitration that initiated this proceeding stated that the purpose of Verizon's proposed contract amendment was to bring existing Massachusetts interconnection agreements "into conformity with present law." [26] Verizon has failed to identify any compelling reasons as to why this process should not apply in the future to other changes in law relating to Verizon's unbundling obligations.

ISSUE 11: How should rate increases and new charges established by the FCC in its final unbundling rules or elsewhere be implemented?

Rate changes and new charges should be implemented by the parties by negotiating (and, if necessary, arbitrating) an amendment to the parties' interconnection agreement. Verizon proposes that any rate increases or new charges that may be established or permitted by the FCC may be implemented by Verizon on the effective date of the rate increase or new charge by the mere issuance of a rate schedule to MCI. Verizon offers no justification for not complying with the "change of law" provision in the underlying agreement. Verizon's proposed course would have MCI be liable for charges solely upon Verizon's interpretation of how any new rates or rate increases are to be applied. Were Verizon to follow the change of law process, disputes about the proper application of new rates/rate increases would be the subject of dispute resolution.

[26] Verizon Petition, February 20, 2004, p.5.

ISSUE 12: How should the interconnection agreements be amended to address changes arising from the TRO with respect to commingling of UNEs or Combinations with wholesale services, EELs, and other combinations? Should Verizon be obligated to allow a CLEC to commingle and combine UNEs and Combinations with services that the CLEC obtains wholesale from Verizon?

The *TRO* eliminated certain restrictions that the FCC previously had placed on the ability of competitive to "commingle" or combine "loops or loop-transport combinations with tariffed special access services." The FCC modified those rules to "affirmatively permit requesting carriers to commingle UNEs and combinations of UNEs with services (e.g. switched and special access services offered pursuant to tariff), and to require incumbent LECs to perform the necessary functions to effectuate such commingling upon request." *TRO*, ¶ 579. Thus, Verizon is now required to permit CLECs like MCI to commingle UNEs or UNE combinations it obtains from Verizon with other wholesale facilities.

According to the *TRO*, Verizon must permit commingling and conversion *upon the TRO's effective date* so long as the requesting carrier certifies that it has met certain eligibility criteria. *Id.*, ¶ 589; 47 CFR § 51.318. Section 4 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment sets forth MCI's proposed language for implementing these new FCC rules.

ISSUE 13: Should the ICAs be amended to address changes or clarifications, if any, arising from the TRO with respect to:

- **a) Line splitting;**
- **b) Newly built FTTP, FTTH or FTTC loops;**
- **c) Overbuilt FTTP, FTTH or FTTC loops;**
- **d) Access to hybrid loops for the provision of broadband services;**

e) **Access to hybrid loops for the provision of narrowband services;**
f) **Retirement of copper loops;**
g) **Line conditioning;**
h) **Packet switching;**
i) **Network Interface Devices (NIDs);**
j) **Line sharing?**

If so how?

MCI's proposed edits of Verizon's proposed amendment are designed to ensure that the language of the amendment tracks, in all respects, the language of the FCC's rules. MCI's proposed edits are included in sections 6 and 7 of the MCI redlined version attached hereto.

ISSUE 14: What should be the effective date of the Amendment to the parties' agreements?

The Amendment should be effective upon Department approval.

ISSUE 15: How should CLEC requests to provide narrowband services through unbundled access to a loop where the end user is served via Integrated Digital Loop Carrier (IDLC) be implemented? Should Verizon be permitted to recover its proposed charges (e.g., engineering query, construction, cancellation charges)?

Section 7.2 of the MCI redlined version sets forth the language that MCI believes is necessary to precisely track the language of the FCC's rules.

ISSUE 20: What obligations, if any, with respect to the conversion of wholesale services (e.g. special access circuits) to UNEs or UNE combinations (e.g. EELs), or vice versa ("Conversions"), should be included in the Amendment to the parties' interconnection agreements?

a) **What information should a CLEC be required to provide to Verizon (and in what form) as certification to satisfy the FCC's service eligibility criteria to (1) convert existing circuits/services to EELs or (2) order new EELs?**
b) **Conversion of existing circuits/services:**

1) **Should Verizon be prohibited from physically disconnecting, separating, changing or altering the existing facilities when Verizon performs Conversions unless the CLEC requests such facilities alteration?**

2) **What type of charges, if any, and under what conditions, if any, can Verizon impose for Conversions?**

3) **Should EELs ordered by a CLEC prior to October 2, 2003, be required to meet the FCC's service eligibility criteria?**

4) **For conversion requests submitted by a CLEC prior to the effective date of the amendment, should CLECs be entitled to EELs/UNE pricing effective as of the date the CLEC submitted the request (but not earlier than October 2, 2003)?**

5) **When should a Conversion be deemed completed for purposes of billing?**

c) **How should the Amendment address audits of CLEC compliance with the FCC's service eligibility criteria?**

Sections 4, 5, 8 and 9 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment set forth MCI's proposed contract language to make the Amendment precisely conform to the language of the FCC's rules.

ISSUE 21: How should the Amendment reflect an obligation that Verizon perform routine network modifications necessary to permit access to loops, dedicated transport, or dark fiber transport facilities where Verizon is required to provide unbundled access to those facilities under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51? May Verizon impose separate charges for Routine Network Modifications?

MCI has not proposed contract language on this issue since the Department ruled that these provisions of the *TRO* do constitute a change of law.[27] Nevertheless, the Department should rule that routine network modifications should be defined in the Amendment in the same manner as the FCC did in the *TRO*. See 47 CFR §51.319(a)(8), (e)(8).

[27] D.T.E. 04-33, Procedural Order, December 15, 2004, p. 30.

ISSUE 22: Should the parties retain their pre-Amendment rights arising under the Agreement and tariffs?

The Agreement, as changed by the proposed Amendment, will be the exclusive source for determining the parties' contract rights. Verizon's proposed Section 3.4 provides that Section 3 of the Amendment is subordinate to any pre-existing and independent rights that Verizon may have under the original agreement, a Verizon tariff or SGAT, or otherwise, to discontinue providing Discontinued Elements. This proposal cannot be justified. The purpose of Section 3 is to define the terms of when Verizon may discontinue offering certain UNEs and UNE combinations. Other contract provisions should not override this section. In all other respects, the proposed amendment supersedes inconsistent provisions in the original agreement. In addition, since MCI is purchasing UNEs out of the interconnection agreement, Verizon tariffs (and SGATs[28]) have no relevance whatsoever.

ISSUE 23: Should the Amendment set forth a process to address the potential effect on the CLECs' customers' services when a UNE is discontinued?

<u>See</u> response to Issue no. 27 *infra*.

ISSUE 24: How should the Amendment implement the FCC's service eligibility criteria for combinations and commingled facilities and services that may be required under 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51?

Section 4 of MCI's redlined edits to Verizon's proposed interconnection agreement amendment sets forth MCI's proposed contract language to make the Amendment precisely conform to the language of the FCC's rules.

[28] Verizon does not have an SGAT in Massachusetts.

ISSUE 27: What transitional provisions should apply in the event that Verizon no longer has a legal obligation to provide a UNE? Does Section 252 of the 1996 Act apply to replacement arrangements?

MCI has proposed several contract provisions to implement the detailed requirements set forth in the FCC's new unbundling rules to govern the transition from UNE arrangements to replacement arrangements. These provisions are set forth in Exhibit B. The following chart indicates the section number for each element affected by the *TRRO:*

Mass Market Switching	MCI Redline, §8.1.1 through 8.1.4
DS1 Loops	§9.1.2
DS3 Loops	§9.2.2
Dedicated DS1 Transport	§10.1.3
Dedicated DS3 Transport	§10.2.3
Dark Fiber Transport	§10.3.2

ISSUE 29: Should the FCC's permanent unbundling rules apply and govern the parties' relationship when issued, or should the parties not become bound by the FCC order issuing the rules until such time as the parties negotiate an amendment to the ICA to implement them, or Verizon issues a tariff in accordance with them.

As stated in connection with Issue # 2, Verizon is obligated to adhere to the change of law provisions of the parties' interconnection agreement. The parties' agreements require that the *TRRO* be implemented through compliance with the agreements' change of law provisions,[29] a result clearly contemplated and directed by the terms of the *TRRO* itself.[30]

On March 17, 2005, MCI sent to Verizon additional contract language to implement the requirements of the *TRRO*, which set forth the FCC's permanent unbundling rules. Proposed section 8 addresses the FCC's new rules on access to Mass Market switching. Proposed section 9 addresses the new FCC rules on access to high capacity loops. Finally, proposed section 10 implements the new FCC rules on access to dedicated transport.

ISSUE 31: Should the Amendment address Verizon's Section 271 obligations to provide network elements that Verizon no longer is required to make available under section 251 of the Act? If so, how?

As stated in MCI's statement on issue no. 1, Verizon's obligations under section 271 should be set forth in the Amendment.

SUPPLEMENTAL ISSUE 1: Should the Agreement identify the central offices that satisfy the FCC's criteria for purposes of application of the FCC's loop unbundling rules?

SUPPLEMENTAL ISSUE 2: Should the Agreement identify the central offices that satisfy the Tier 1, Tier and Tier 3 criteria, respectively, for purposes of application of the FCC's dedicated transport unbundling rules?

SUPPLEMENTAL ISSUE 3: Should the DTE determine which central offices satisfy the various unbundling criteria for loops and transport? If so, which central offices satisfy those criteria?

[29] See MCI/Verizon Agreement, Part A, §§8.2, 8.3.

[30] *TRRO*, ¶233.

MCI has proposed contract language to implement the applicable provisions of the *TRRO* relative to the identification of wire centers where Verizon no longer has obligations to provide unbundled access to high capacity loops or dedicated transport. This language is set forth in sections 9.3 (loops) and 10.4 (dedicated transport) in Exhibit B. MCI's proposal would have the wire centers satisfying the FCC's criteria listed in an exhibit to the Amendment. The Department should decide in this proceeding which wire centers should be included in the list. MCI's proposed language would also provide for a process for updating the list, granting MCI reasonable discovery rights and submitting disputes over the updates to the Department for resolution.

SUPPLEMENTAL ISSUE 4: What are the parties' obligations under the *TRRO* with respect to additional lines, moves and changes associated with a CLEC's embedded base of customers?

The new rules adopted by the *TRRO* provide that a CLEC shall have access to local circuit switching on an unbundled basis for a one year transition period "for a [CLEC] to serve its embedded base of end-user customers." [31] The ability to process orders for additional lines, moves and other changes is a necessary component of MCI's ability to provide service to its embedded base of customers. Under the plain meaning of the FCC's new rules, Verizon is obligated to provide access to unbundled switching for one year from the effective date of the *TRRO* to handle orders for additional lines, moves and changes.

[31] 47 CFR §51.319(d)(2)(iii).

DEPARTMENT'S BRIEFING QUESTIONS

The following sets forth MCI's responses to the briefing questions posed to the parties in the March 10, 2005 memorandum to the parties in this proceeding.

1. Notwithstanding the carrier's substantive arguments in this proceeding regarding proposed rates, terms, or conditions for any specific service, for each carrier's individual interconnection agreement, please identify each and every term that is relevant to whether or not the interconnection agreement's change of law or dispute resolution provisions permit the parties to implement changes of "applicable law" without first executing an amendment to the interconnection agreement. In providing your response, please quote the relevant interconnection agreement provisions, citing them by section, and provide highlighted copies of the relevant language.

MCI Response:

As stated above, MCI's interconnection agreement requires that Verizon adhere to the change of law provisions of its interconnection agreement before implementing a change of law. The relevant provisions are as follows:

> 8.2 In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section 16 (Dispute Resolution Procedures) hereof.
>
> 8.3 In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of MCIm or BA to perform any material terms of this Agreement, MCIm or BA may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or has otherwise become legally

effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.[32]

2. Indicate whether a change of law or dispute resolution provision has been triggered and state the date on which each condition precedent or party obligation (*e.g.*, notice requirements) was met, if applicable, with regard to the implementation of the Triennial Review Remand Order, or any other statutory, judicial, or regulatory change, state or federal, that you claim did modify the parties' rights under the interconnection agreement.

MCI Response:

A change of law with respect to unbundling obligations occurred with respect to the *TRRO* on March 11, 2005, the effective date of the rules adopted in the *TRRO*.

Respectfully submitted,

MCI, Inc.

By:____________________________________

Richard C. Fipphen
Senior Counsel
MCI, Inc.
200 Park Avenue, 6th floor
New York, NY 10166
(212) 519-4624
richard.fipphen@mci.com

Dated: April 5, 2005

[32] See MCI/Verizon Agreement, Part A.